

BOARD OF APPEALS
City of Rockville, MD
RULES OF PROCEDURE

I. Composition

- A. Number. The Board consists of three (3) members. In addition, there is one (1) alternate member who is empowered to sit on the Board in the absence of any member of the Board. In the absence of the alternate, the Mayor and Council may designate a temporary alternate. All members of the Board and the alternate shall be residents of the City of Rockville.
- B. Appointment. Members are appointed by the Mayor, subject to confirmation by the Council.
- C. Term. The term of each member is three (3) years, or until a successor takes office.

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- D. Chair. The Board shall elect a Chair from one of its appointed members to serve for a term of one (1) year. The Chair shall preside at hearings and meetings of the Board and call special meetings of the Board.

In the absence of the Chair, a member shall be designated by the Chair; or in the absence of such designee, a member selected by the Board shall preside.

- E. Staff. The staff shall maintain an electronic transcript of the record of the hearings and decisions of all public meetings for one year, and shall prepare written minutes of all public meetings and hearings for approval by the Board.

The Department of Community Development shall give all required notices of public hearings. The Planning staff serves as staff to the Board and provides professional and clerical staff to the Board.

II. Powers and Duties

The powers and duties of the Board are set forth in the Annotated Code of Maryland, B Article 66B, and the Laws of Rockville.

III. Filing of Applications

- A. An application for a special exception or variance may be filed at any time during normal business hours except as provided for herein.
- B. Administrative appeals to the Board must be filed within forty (40) working days after the date of the administrative decision from which an appeal is taken.
- C. A new application or appeal requesting the same action or relief as an application previously denied, dismissed, or allowed to be withdrawn with prejudice by the Board, and regarding the same property, may not be resubmitted for one year after the original action has elapsed.
- D. Any application for special exception or variance, withdrawn without prejudice or dismissed without prejudice, may be refiled at any time.
- E. No application or appeal concerning property which was the subject of a previously denied application, and requesting the same relief, shall be granted ~~except upon new evidence and/or evidence of changed conditions or mistake. This~~ does not apply to motions for applications for reconsideration or rehearing under Sections VIII and IX.
- F. Applications for special exceptions or variances seeking different relief or a different use with regard to property which has been the subject of a previous application may be submitted at any time and will be decided based on the evidence presented.
- G. No application or appeal shall be heard while a previous appeal requesting the same action or relief with respect to the same property is pending in any court.
- H. All applications must be filed by the owner of record of the land which is involved in the application; or if filed by another person, must be accompanied by written authorization from the property owner.
- I. An application for a modification of a term or condition may be filed at any time during normal business hours except as provided for hereinabove.
- J. All applications, appeals, correspondence shall be filed with the Department of Community Planning and Development Services.

IV. Notices

The calendar of applications and appeals to be heard, showing the applicants and subject properties, shall be maintained by the Department of Community Planning and Development Services, and shall be available for public inspection during normal business hours.

V. Preparation of Cases

- A. When an application is filed, it is to be promptly referred to the Planning Commission (if Planning Commission review is required). Application requests for residential zoning variances will be generally heard at the Board's first regularly scheduled public hearing that occurs a minimum of forty (40) working days following the filing of the application with the Department of Community Planning and Development Services.

Application requests for nonresidential zoning variances and special exception requests will be generally heard at the Board's first regularly scheduled public hearing that occurs a minimum of sixty (60) working days following the filing of the application with the Department of Community Planning and Development Services. With all filings, the Chair may, for scheduling reasons or other good cause shown, shorten or lengthen said time periods.

- B. Staff shall process and study each request, and dependent upon the extent of compliance with applicable criteria of the Ordinance for granting such a request, make a recommendation for Board action and formal disposition of the matter.
- C. The Planning Commission may make its recommendation to the Board on each case it considers within fifty (50) working days from notification of the filing of an application. The Commission's written recommendation shall be placed in the application file at least eight (8) days prior to the public hearing.
- D. The staff shall furnish the Board with briefing materials, prepared by the Planning staff, at least eight (8) days before each scheduled meeting. The briefing materials shall contain the recommendation of the Planning Commission, the Planning staff, and other pertinent papers or exhibits relating to each case to be heard at the hearing for which the brief book is prepared. In order for correspondence to be included in the Board's briefing material, it must be submitted to the Department of Community Planning and Development Services no later than eight (8) days prior to the scheduled meeting.

- E. The staff shall, with the concurrence of the Chair, prepare a draft agenda which shall be available to the Board and the public approximately ten (10) days before each scheduled meeting.

VI. Hearings and Meetings

- A. Time and Place of Hearings. The Board holds regular hearings on one Saturday per month at 9:30 a.m., or at such other time as the Chair may designate in the Rockville Mayor and Council Chamber (except when there are no cases to be heard and sometimes excepting the month of August). Special meetings are held upon the call of the Chair. Dates of the public hearings are posted in the City Hall, and also on signs on the properties which are the subject of the special exception and variance requests. Notices are sent by mail as required by law and these rules.
- B. Quorum. Two members of the Board shall be required to approve all applications. The Chair shall have the right to make or second motions.
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- C. Public Hearings. The applicant or moving party or respective representative must be present at all public hearings. Failure to appear may cause the matter to be dismissed with prejudice.
- D. Continuance of Hearing. Hearings may be adjourned from time to time; and if the time and place of the continued hearing be publicly announced at the time of the adjournment, no further notice of such continued hearing shall be required; otherwise, notice thereof shall be given as in the case of the original hearing.
- E. Order of Business. Meetings of the Board may be conducted in the following:
1. Hearing of cases.
 2. Work session.
 3. Decisions.
 4. Old Business.
 5. New Business.

- I. Petitions. Petitions filed in a particular case and containing more than five names shall set forth the name and address of an agent who is to receive a copy of the decision and other relevant communications on behalf of the signers of the petition.
- J. Decisions. The Board shall grant or deny each application or appeal. Two votes are required to approve an application or grant an appeal. Failure to obtain two votes shall have the effect of a denial. Each grant or denial shall set forth a summary of facts found and reasons for the decision. The Board may impose conditions on a grant of a special exception or variance, and may modify previous administrative actions.
- K. Notice of Decision. The Board of Appeals shall provide written notice of its decision on any petition for the grant of a variance or appeal application by first class mail to the petitioner or applicant, the Planning Commission, any party testifying at the public hearing, and to any other person who has entered an appearance in writing. Whenever an appearance is made before the Board through an agent (an attorney or other party), the Board shall provide written notice of the decision to said agent who shall be responsible for notifying the parties on whose behalf the agent acted. The Board shall also provide written notice of its decision to any person who requests a copy of the decision.
- L. Record. An electronic transcript (tape recording of the hearing) shall be kept by a recording device, and the tape shall be preserved as a public record of the City of Rockville for a period of one year. The recording may be transcribed stenographically or copied electronically by any interested person at his/her own expense by arrangement with and under the supervision of the Chief of Planning.
- M. Minutes. Written minutes approved by the Board shall be kept by the staff showing the disposition of all cases and shall show the vote of each member upon each question or, if the member is absent or fails to vote, the minutes shall indicate that fact. The minutes shall summarize the facts and the reasons for the decision in each case, and shall be public records available for inspection.

VII. Withdrawal of Application

Requests to withdraw an application shall be made orally before the Board at the time of the public hearing or in writing at any time before the final decision of the Board. Granting of any such withdrawal shall be at the discretion of the Board, and may be with or without prejudice. If withdrawal is with prejudice, provisions of Section IIIc. shall apply to new applications.

VIII. Reconsideration

A request for reconsideration of a decision of the Board must be filed by a party within ten (10) days after the date upon which the original decision was made by the Board. Such request must be in writing and must set forth specifically the reasons for requesting reconsideration.

The party or agent requesting reconsideration shall also give written notice on a form provided by the Board to any person who became a party in accordance with Paragraph VI. G by hand delivering or mailing such notice on the same day that the request for reconsideration is filed with the Board. Such notice shall be dated with the date of delivery or mailing. A copy of such notice shall be promptly filed with the Board and shall contain a dated certification that a copy of said request was hand delivered or mailed to all such persons or their agents at the address of such persons or agents as indicated in the record. Those persons shall have fifteen (15) days from the date of the notice to submit written comments regarding the request. The Board may either dismiss the request or grant reconsideration.

The Board may reconsider a decision on its own motion, provided such motion is made no later than the Board's next regular meeting following the date upon which the original decision was made.

When reconsideration is granted, the Board may, at its discretion, conduct a hearing thereon. When a reconsideration hearing is scheduled, notice shall be given as in the case of the original hearing, except no posting or fees shall be required, and it shall include any persons who became a party in accordance with Paragraph VI.G. At the hearing thereon, no new evidence shall be submitted or accepted.

IX. Rehearing

A request for rehearing of any decision of the Board must be filed by a party within thirty (30) days after the date upon which the original decision was made by the Board. The request must be in writing and must set forth specifically the reasons for requesting rehearing.

The party requesting rehearing shall also give written notice on a form provided by the Board to any person who became a party in accordance with Paragraph VI.G by hand delivering or mailing such notice on the same day that the request for rehearing is filed with the Board. Such notice shall be dated with the date of delivery or mailing. A copy

of each notice shall be promptly filed with the Board, and shall contain a dated certification that a copy of said request was hand delivered or mailed to all such persons or their agents at the addresses of such persons as indicated in the record. Those persons shall have fifteen (15) days from the date of notice to submit written comments regarding the request. The Board may either dismiss the request or grant rehearing.

No motion for rehearing in regard to any decision adopted by the Board shall be entertained unless evidence of changed circumstances or new evidence is submitted which could not reasonably have been presented at the meeting at which the hearing was originally held or unless an error was made at the original hearing which requires a rehearing in order to be corrected. Where a rehearing is granted, notice shall be given as in the case of an original hearing, including reposting where practical, and shall include any person who became a party in accordance with Paragraph VI.G.

X Modification of a Variance

A. Definitions.

1. De Minimis modification. A modification that does not substantially change any express term or condition of a variance or any significant element of the plan upon which the variance was granted.
2. Modification of a term or condition. A modification that changes:
 - a. any express term or condition of a variance imposed by the Board;
or
 - b. any significant element of the plan upon which the variance was granted
3. Substantive modification. A modification that increased the extent of the variance.

B. De Minimis Modifications.

The Chief of Planning may permit a de minimis modification where the Chief of Planning finds that the proposed change would not have affected the Board's decision in granting the variance or in setting terms or conditions of the variance.

C. Substantive Modifications.

An application for a substantive modification shall be treated as, and shall be subject to, all procedures and requirements of an application for a new variance.

D. Modification of a Term or Condition

1. An application for modification of a term or condition shall be processed in accordance with the Rules of Procedure applicable to variances, except as provided below.
2. The Board's review shall be limited to the effect of the proposed modification. The merits of the previously granted variances shall not be reopened.
3. A staff report shall not be mandatory in connection with an application for a modification of a term or condition. Staff may submit a report.

XI. Review of Decisions and Enforcement of Conditions

The Board may review special exceptions from time to time to ascertain whether all conditions imposed are being met.

XII. Appeals to the Courts

Appeals from decisions of the Board shall be taken to the Circuit Court for Montgomery County, Maryland in accordance with the provisions for appeal contained in Article 66 of the Annotated Code of Maryland as now constituted and as it may hereafter be amended.

XIII. Rules of Procedure

Unless otherwise specified herein, Robert's Rules of Order are generally followed.

XIV. Rules Not Jurisdictional

These Rules of Procedure do not constitute jurisdictional requirements. Failure of the board, its staff, or any party to comply with any provision of these Rules of Procedure shall not invalidate any otherwise valid decision or action of the Board.

Adopted February 8, 1975

Amended November 5, 1977

Sections VIII and IX Amended May 6, 1978

Sections VIII and IX Amended August 14, 1984

Amended September 7, 1985

Amended June 6, 1992

Amended February 8, 1995

Sections VIII and IX Amended June 28, 1996

Amended March 1, 1997

Sections III and V Amended January 30, 1998
